

THE CHANCELLOR :

This cause is now brought before the court upon exceptions to the report of the Auditor, and the counsel for the parties have been heard. In one of the accounts accompanying this report, the whole of the net proceeds of the "Wheatfield Inn" has been assigned to William J. Albert and wife, in part payment of their claim, No 26, and the propriety of this appropriation is the principal question now to be decided. It is a question of interest and importance, not only with reference to the amount of money involved, but with regard to the principle upon which the claim to a preference over the other creditors is asserted.

A short statement of the facts of the case is necessary to a proper understanding of it.

Samuel Jones being indebted to his sister, Emily J. Albert, the wife of William J. Albert, for certain trust funds held by him for her use under the will of his father, Talbot Jones, and which he (Samuel Jones) had converted into money and misapplied—some time in the month of November, 1845, he agreed, (as is alleged,) by parol, to convey to the said Albert and wife, a piece of property in the city of Baltimore called the "Wheatfield Inn," by way of mortgage, for the purpose of securing to them the amount so misapplied ; but this agreement was never executed.

Subsequently, to wit, on the 14th of September, 1846, Jones having then become utterly insolvent, certain of his creditors filed a bill in this court, alleging the fact of such insolvency, that he contemplated applying for the benefit of the insolvent laws, and charging that he designed giving preferences to certain of his creditors, his near relations ; and that he was about to convey a large portion of his property to said Albert and wife, with intent to give them an undue and improper preference : prayed for and obtained an injunction, restraining him from giving, and them from receiving, such preference.

On the 29th of the same month and year, and after the service of the injunction upon them, and whilst it remained in full force and effect, Albert and wife filed their bill on the equity side of Baltimore County Court, alleging the indebtedness of